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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 20th September 2007

No.10866-IB/3-3/2000(PT)/LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 30th June 2007 in I.D. Case No. 19 of 2002 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Chandrabhaga Prawn Hatchery, Chandrabhaga, Puri represented through the General Secretary, Pilot Prawn Seed Hatchery Workers Union, Puri was referred for adjudication is hereby published as in the schedule below:—

SCHEDULE

IN THE, LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE NO. 19 OF 2002

The 30th June 2007

Present :

Shri S.K.Mohapatra, O.S.J.S. (Jr. Br.)

Presiding Officer,

Labour Court,

Bhubaneswar.

Between :

The Management of

M/s Chandrabhaga Prawn

Hatchery, Chandrabhaga.

.. First-party—Management

And

Its workman represented through

the General Secretary,

Pilot Prawn Seed Hatchery

Workers Union

.. Second-party—Workman

Appearances :

Shri I. Khan	..For First Party—Management
Shri P.C. Mohapatra	.. For Second Party—workman

AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the Management of M/s. Chandrabhaga Prawn Hatchery, Chandrabhaga and its workman represented through the General Secretary, Pilot Prawn Seed Hatchery Workers Union under Notification No. 10909/LE., dated the 16th August 2000 vide Memo No. 1435(5)/LE., dated the 4th February 2000 for adjudication by this Court.

2. The terms of reference by the State Government is as follows:—

“Whether the action of the Management of M/s. Chandrabhaga Prawn Hatchery, Konark, Puri in terminating the employment of Shri Ajaya Kumar Behera and 35 others with effect from 30th September 2001 by way of retrenchment is legal and/or justified? If not, to what relief the workman are entitled to?”

3. The brief facts leading to the present reference by the Government of Orissa in exercise of its power under Section 12(5) of the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D. Act) are as follows:—

The workman numbering 36 were working under the Management of Chandrabhaga Prawn Hatchery, Chandrabhaga (hereinafter referred to as the Management) in different capacities. Previously they were getting their wages from the Executive Engineer, Fishery Engineering Department, Bhubaneswar but after that when the Management came into being, the services of all the workman were placed under the direct control of the Management with effect from 3rd December 1994. Since the wages for the period from December, 2000 to March, 2001 were not paid to the workman they made a complaint to the District Labour Officer, Puri in the matter. After the District Labour Officer intervened in the matter, the Management became vindictive and gave a notice in the notice board that the services of all 36 workman would be dis-continued with effect from 30th September 2001. The Management did not follow the mandatory procedure under Section 25-F of the I.D. Act while giving notice of termination of service to the workmen. The workmen of this case raised an industrial dispute before the District Labour Officer, Puri who started a conciliation proceeding which ended in failure and the matter

was referred to this Court for adjudication. During the pendency of the industrial dispute, the Management issued individual notices to all the workers to receive their compensation salary up to 31st March 2002 and all the workman were retrenched from service with effect from 31st March 2002. The compensation paid by the Management did not take into account the service rendered by the workmen prior to the year 1994. On all these averments the workmen have contended that their retrenchment with effect from 31st March 2002 is illegal and therefore they are entitled to the benefit of reinstatement in service with full back wages.

4. The Management in its written statement has contended that on 31st August 2001 the Project Director of the Management brought out a notice to retrench the 36 numbers of contingent workers on the ground of non-achievement highest production and non-availability of funds. In the letter No. 1594 dated the 31st August 2001 one month's notice of retrenchment as required under Section 25-F of the I.D. Act had been given but the said order was not given effect to and the workman were allowed to continue as before and they were given their wages and therefore the contention of the workman before the Labour authorities that they have been retrenched from service with effect from 30th September 2001 was not correct. Though the Management has not set forth in the written statement in clear term it appears that subsequently the workmen of this case were retrenched from their service with effect from 31st March 2002 after individual notices to all of them. On these averments the Management has contended that the workman are not entitled to any relief whatsoever.

5. on the basis of the aforesaid pleadings, the following issues have been framed for determination.

ISSUES

- (i) "Whether the action of the Management of M/s. Chandrabhaga Prawn Hatchery, Konark, Puri in terminating the employment of Shri Ajaya Kumar Behera and 35 others with effect from 30th September 2001 by way of retrenchment is legal and/or justified ?
- (ii) If not to what relief the workman are entitled to?"

6. In this context one of the workman namely Prafulla Kumar Mishra has examined himself, as W.W.1. In his evidence W.W.1 has stated that he was working as a Store Assistant under the Management at Chandrabhaga from 21st July 1991 to 31st March 2002 and he was dis-engaged from service with effect from 1st April 2002. According to W.W.1 while terminating his service had paid only a sum of Rs.40,200/- towards compensation which included 14 months of arrear wages. According to W.W.1 he had worked for more than 240 days in each year of his service. W.W.1 has proved Ext.1 which

is the Xerox copy of the minutes dated 3rd December 1994 under which the question of smooth Management of Prawn Hatchery was discussed. Annexure-1 to Ext.1 includes 26 numbers of daily wage labourers who were proposed by the Executive Engineer, Fishery Engineering Division to be engaged under the Management. Ext.2 is the information of contingent workers of the Management who are workmen of this case. In Ext.2 it has only been mentioned in remark column that previously the contingent workers were getting their wages from the Executive Engineer, Fishery Engineering Division, Bhubaneswar for the period August, 1994 to May,1998 and thereafter they were paid their wages by the Management. These two documents in themselves do not prove in any way that W.W.1 was working under the Management with effect from 21st July 1991. The seniority list attached to Ext.2 however shows that W.W.1 had started his work under the Executive Engineer, Fishery Engineering Division, Bhubaneswar as Casual/D.L.R. labourer with effect from 21st July 1991. Ext.A proved by M.W.1 shows that the Management concerned began its operation in the year 1994 only. Therefore it can never be said that the W.W.1 was working under the Management with effect from 21st July 1991. Therefore the Management was bound to calculate the dues of the workman W.W.1 at the time of his retrenchment from the year 1994 only and not for any period prior to that. In his cross-examination W.W.1 has categorically admitted that the Management started functioning from August, 1994.

Another workman Bhagirathi Nayak who has examined himself as W.W.2 in his evidence has stated that he was working under the Management since the year 1992 till he was retrenched from service in the year 2002 by way of refusal of employment. In his evidence W.W.2 has further stated that although he had worked for more than 240 days in the preceding 12 months to the date of his termination, the provisions of the I.D Act were not followed. Both W.Ws.1 and 2 in their cross-examination have admitted that they had been paid compensation at the time of termination of their service. W.W.2 in his evidence has stated that he had been paid Rs.2,080/- towards one month's salary in lieu of one month's notice and Rs.9,600/- towards compensation at the rate of 15 days of wages for every completed year of service and Rs.9,600/- towards gratuity dues and Rs. 18,931/- towards arrear and current wages.

7. Project Director of the Management has been examined as M.W.1. In his evidence, W.W.1 had made it very clear that the Management started functioning since August, 1994 and the workman were working as D.L.R. labourers since August, 1994. According to M.W.1 due to non-achievement of targeted production notices were issued to all the workmen individually in accordance with the provisions of the I.D. Act for

retrenchment in August, 2001 but as because the Management had no requisite funds to pay all the retrenchment dues the workmen were allowed to continue in the organization of the Management till 31st March 2002 when they were retrenched from service in accordance with rules after being given one month's pay in lieu of notice and other benefits like compensation along with the back wages. M.W.1 has proved Ext.A which is the policy decision of the Government regarding dis-engagement of contingent workers, Ext.B is the Xerox copy of report showing commencement of the organization of the Management since 1994 and Ext.E (72 sheets) showing Xerox copies of documents indicating payments of all retrenchment benefits including one month's salary in lieu of one month's notice to all the workmen. Such evidence of M.W.1 conclusively proves that the workmen of this case had been retrenched from service with effect from 1st April 2002 and that the Management had duly complied with the provisions of Section 25-F of the I.D. Act at the time of retrenchment of all the workmen. Ext.E shows the details of payments including compensation and one month's salary in lieu of one month's notice to all the workmen. The clear cogent and convincing evidence of M.W.1 conclusively proves that the Management had retrenched the workmen from their services with effect from 1st April 2002 and that at the time of retrenchment the provisions under Section 25-F of the I.D. Act had been duly followed by the Management and therefore, the retrenchment of the workmen of this case can not be said to be illegal and unjustified. Hence it is held that the workman Shri Ajaya Kumar Behera and 35 others had been retrenched from their services with effect from 1st April 2002 which was both legal and justified. The issue No. (i) is answered accordingly.

8. Before parting with the issue No. (i) it is be noted that the workman of this case had raised an industrial dispute prior to the date of their actual retrenchment from service and therefore, in the reference the date of retrenchment has been noted to be 30th September 2001 although the workmen were retrenched from their service actually with effect from 1st April 2002. It is surprising that the Trade Union to which the workmen were members raised an industrial dispute although the workmen of the present case were very much in service as on 30th September 2001 and they had received their wages as before from the Management. Because the Trade Union raised a false industrial dispute falsely claiming that the workmen had been retrenched from their service with effect from 30th September 2001 the present situation arose. The workmen can not take benefit of their own falsehood, by raising an industrial dispute before actually being retrenched from service. They had worked under the Management till 31st March 2002 and had received their wages till then. As already held the Management while effecting

retrenchment had paid all their dues to all the workmen in accordance with the provisions under Section 25-F of the I.D. Act. The present reference is dated the 4th February 2002 while the date of actual retrenchment is 1st April 2002 i.e. when a dispute was pending in the present Court i.e. in the Court of the Presiding Officer, Labour Court, Bhubaneswar. Apparently the Management had not made any application under Section 33-2(b) of the I.D. Act seeking approval of the action of the Management in terminating the services of the workmen during pendency of the present case before this Court. The failure of the Management to make an application for approval of its action by itself does not render the retrenchment of the workmen of this case illegal because the Management had observed the provision under Section 25-F of the I.D. Act thoroughly in the instant case and therefore the non-observance of the provision under Section 33-2(b) of the I.D. Act in the facts and circumstances of the case can at best be an irregularity on the part of the Management but the same shall not render the retrenchment in question illegal in any manner and under no circumstances it would entitle the workmen for reinstatement in their service.

In view of the answer to issue No. (i) the workmen are not entitled to any benefit under any provision of the I.D. Act and therefore, the issue No.(ii) is answered accordingly.

9. In view of the discussion made above, the reference is answered as follows:—

- (i) The workmen of this case had been retrenched from their service with effect from 1st April 2002 and not with effect from 30th September 2001 as noted in the reference. The retrenchment of the workmen of this case with effect from 1st April 2002 is legal and justified.
- (ii) The workmen of this case are not entitled to any relief whatsoever.

Dictated and corrected by me

S.K. Mohapatra
 Dt. 30-06-2007
 Presiding Officer,
 Labour Court,
 Bhubaneswar.

S.K. Mohapatra
 Dt. 30-06-2007
 Presiding Officer,
 Labour Court,
 Bhubaneswar.

By order of the Governor

N.C.RAY

Under-Secretary to Government